

Commodity Futures Trading Commission

§ 36.2

foreign person is not formed solely for the purpose of constituting an eligible participant and has total assets exceeding \$5,000,000;

(v) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such commodity pool or foreign person is not formed solely for the purpose of constituting an eligible participant and has total assets exceeding \$5,000,000;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the purpose of constituting an eligible participant (A) which has total assets exceeding \$10,000,000; or (B) which has a net worth of \$1,000,000 and enters into a section 4(c) contract market transaction in connection with the conduct of its business; or (C) which has a net worth of \$1,000,000 and enters into a section 4(c) contract market transaction to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(vii) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding \$5,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. §80b-1 *et seq.*), or a commodity trading advisor subject to regulation under the Act;

(viii) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(ix) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. §78a *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf: *Provided, however*, that if such

broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of paragraph (c)(2)(vi) or (xi) of this section;

(x) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation; or

(xi) Any natural person with total assets exceeding at least \$10,000,000.

(3) *Section 4(c) contract market trading rules* means: Contract market rules prescribing trading procedures applicable only to section 4(c) contract market transactions.

(4) *Terms and conditions* has the same meaning as in §1.41(a)(2) of this chapter.

§36.2 Trading of section 4(c) contract market transactions.

A section 4(c) contract market transaction may be traded pursuant to the provisions of this part provided the following conditions are met:

(a) The section 4(c) contract market transaction:

(1) Provides that settlement or delivery shall be in cash (at a cash settlement price that reflects the cash market for the underlying commodity and is based on a price series that is reliable, publicly available, and timely) or by means other than the transfer or receipt of any commodity, except a foreign currency for which there is no legal impediment to delivery and for which there exists a liquid cash market; *provided however*, that the terms and conditions of such transaction are in conformity with the underlying cash market (or, in the absence of conformity, are necessary or appropriate) and that trading is not readily susceptible to price manipulation, nor to causing or being used in the manipulation of the price of any underlying commodity;

(2) Is cleared through a clearing organization subject to Commission oversight;

(3) Except with respect to a broad-based index, does not involve any, or the price of any, wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain

sorghums, millfeed, butter, eggs, onions, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil, and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, or frozen concentrated orange juice;

(4) Does not involve any commodity futures contract or commodity option contract in which there is any open interest and in which there has been any trading on any board of trade during the six consecutive complete calendar months preceding the date of application to trade as a section 4(c) contract market transaction, unless the transaction can reasonably be distinguished from any such futures contract or commodity option contract based on its hedging function and/or pricing basis; *provided however*, that (i) the five- and ten-year interest rate swaps futures contracts, the Rolling Spot Contracts in foreign currency, and the foreign currency forward futures contracts and options thereon, may be traded as section 4(c) contract market transactions, and (ii) a flexible commodity option may be listed as a section 4(c) contract market transaction prior to listing such option for trading otherwise; and

(5) Does not involve any contracts of sale (or options on such contracts) subject to the provisions of section 2(a)(1)(B) of the Act, including contracts for future delivery of a group or index of securities (or any interest therein or based upon the value thereof).

(b) The contract market on which the section 4(c) contract market transaction is traded need not satisfy the requirements of § 1.61 of this chapter.

(c) The contract market on which the section 4(c) contract market transaction is traded or executed complies with the provisions of this part.

§ 36.3 Section 4(c) contract market trading rules.

A board of trade may submit for Commission review, pursuant to the expedited procedures set forth in this paragraph, trading rules for section 4(c) contract market transactions (“special execution procedures”) that need not meet the requirements of sec-

tions 4b(a)(iv), 4b(b) and 4c(a) of the Act and §§ 1.38(a), 1.39, 155.2, 155.3 and 155.4 of this chapter, provided that such section 4(c) contract market trading rules satisfy the terms and conditions of this section.

(a) *Definition*. “Special execution procedures” means contract market rules permitting noncompetitive bids, offers, negotiation, and/or execution of orders and transactions.

(b) Special execution procedures that permit a member to trade for his own account opposite the account of another member must provide for an audit trail that meets the requirements of § 1.35(a), (e), (g) and (i) and § 1.38(b) of this chapter.

(c) Special execution procedures that permit a futures commission merchant or floor broker to take the opposite side of a customer order for its own account or permit the execution of orders directly between customer accounts of different principals must provide for an audit trail that meets the requirements of paragraph (b) of this section and that also requires a written record of each customer order which must consist of customer account identification, terms of the order, including price-specific instruction from the customer, order number, and time of order receipt. No order shall be executed without price-specific instruction from the customer. Procedures submitted under this paragraph also must include a specific prohibition against disclosure of customer order information other than to facilitate execution thereof and a requirement that members provide to their customers, in writing, prior to the initial execution for that customer of any transaction using these procedures, a description of the special execution procedures and, in particular, how they vary from on-floor competitive trading procedures.

(d) Section 4(c) contract market trading rules that provide that transactions may be executed using any combination of special execution procedures and competitive on-floor trading procedures must set forth the circumstances under which such transactions could occur competitively on-floor, provided that any transaction executed using special execution procedures be in compliance with paragraphs